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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 LAURENCIO MARTINEZ QUINTERO,

12 Petitioner,

13 v.

14 TAMMY FOSS,

15 Respondent.
16

No. 2:20-cv-00200-TLN-CKD P

ORDER

17 Petitioner is a state prisoner proceeding pro se and in forma pauperis in this habeas corpus
18 proceeding filed pursuant to 28 U.S.C. § 2254. On March 22, 2021, the district court judge
19 adopted the Findings and Recommendations issued on December 29, 2020, and dismissed
20 petitioner's second amended habeas corpus application as a mixed petition.¹ ECF No. 32. The
21 case was remanded for further proceedings. ECF No. 32. Petitioner is directed to file a third
22 amended petition containing only exhausted claims within 60 days from the date of this order.
23 Petitioner may file a motion to stay these proceedings pursuant to Kelly v. Small, 315 F.3d 1063
24 (9th Cir. 2003), if he is exhausting his state court remedies with respect to his ineffective
25 assistance of counsel claims.²

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27 ¹ Petitioner's claims for relief based on the ineffective assistance of counsel raised as claims 7-13
in the second amended petition were summarily dismissed without prejudice.

28 ² See King v. Ryan, 564 F.3d 1133, 1140-41 (9th Cir. 2009) (emphasizing that a "petitioner

1 Accordingly, IT IS HEREBY ORDERED that petitioner file a third amended habeas
2 corpus petition within 60 days from the date of this order.

3 Dated: June 28, 2021

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5 CAROLYN K. DELANEY
6 UNITED STATES MAGISTRATE JUDGE
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26 seeking to use the Kelly procedure will be able to amend his unexhausted claims back into his
27 federal petition once he has exhausted them **only** if those claims are determined to be timely.
28 And demonstrating timeliness will often be problematic under the now-applicable legal
principles.”) (emphasis added); see also 28 U.S.C. § 2244(d)(1) (stating that a one year period of
limitation shall apply to all federal habeas petitions challenging a state court judgment).